Federal Communications Commission 45 L Street NE Washington, DC 20554

News Media Information 202-418-0500 Internet: www.fcc.gov TTY: 888-835-5322

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FCC ENFORCEMENT ADVISORY

FCC LICENSEES AND AUTHORIZATION HOLDERS MUST TIMELY DISCLOSE CHANGES IN FOREIGN OWNERSHIP AND CONTROL

Commission and Executive Branch review of foreign ownership of Commission licensees and authorization holders protects vital U.S. national security and law enforcement interests.

Communications systems have been identified as uniquely critical because of the enabling functions they provide across all critical infrastructure.\(^1\) The Communications Act of 1934, as amended (the Act), tasks the Federal Communications Commission (Commission or FCC) with identifying and addressing communications sector vulnerabilities.\(^2\) The Commission's Enforcement Bureau (Bureau) issues this Enforcement Advisory to remind regulated entities that hold certain FCC licenses or authorizations (collectively, licenses), and those seeking control of the same, of their obligation to seek and receive Commission approval prior to assignments or transfers of control through mergers, sales or otherwise and prior to other changes in ownership resulting in reportable new foreign interest holders or reportable increases in existing foreign ownership interests.\(^3\)

A regulated entity's failure to make the appropriate Commission filings and provide the required ownership information violates the Act and Commission rules. These statutory provisions and rules are intended to ensure that such changes are consistent with the public interest. A critical component of this public interest evaluation includes important national security, law enforcement, foreign policy and trade policy concerns.⁴ The Commission has established

¹ See The White House, Presidential Policy Directive 21: Critical Infrastructure Security and Resilience (PPD-21) (Feb. 12, 2013), https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.

² 47 U.S.C. §§ 214, 310(a), 310(b), 310(d). See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Report and Order, 35 FCC Rcd 10927 (2020) (Executive Branch Review Order); Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 61-66 (1997) (Foreign Participation Order); Order on Reconsideration, 15 FCC Rcd 18158 (2000).

³ Likewise, we remind regulated entities of their obligation to notify the Commission promptly of pro forma transactions that do not require prior approval, as noted further below.

⁴ See Executive Branch Review Order, 35 FCC Rcd 10927; Foreign Participation Order, 12 FCC Rcd at 23918-21, paras. 61-66.

processes for ensuring review of such questions, in conjunction with obtaining the views of the Executive Branch, particularly when addressing risks to U.S. national security and law enforcement interests.⁵

Failure to comply with these statutory and regulatory requirements for Commission consent to such assignments and transfers of control may result in monetary forfeiture, divestiture of ownership, continuing reporting obligations, and/or revocation of the underlying license(s).

Risks Arising from Non-Notified Changes in Foreign Ownership

While all unauthorized assignments or transfers of control will be subject to such enforcement actions, we note in particular that unauthorized foreign ownership of a U.S. entity can result in unaddressed and unmitigated risks to U.S. national security and law enforcement interests. The Commission's public interest analysis of ownership and control of applicants for Commission licenses rests, in part, on an applicant's foreign ownership structure as it exists at the time the Commission considers the application, and in connection with such consideration, refers an application to the Executive Branch for review. The level of foreign ownership or control at the time of a review may also inform the analysis of whether these risks can be mitigated.⁶ Any subsequent undisclosed and unauthorized assignments or transfers of control may alter the national security and law enforcement risk analyses, including whether and how these risks can be mitigated. Absent proper disclosures to the FCC, the Commission's initial public interest determination may no longer apply, because a non-notified transfer or assignment may introduce a new threat which presents an ongoing and unmitigated risk to national security or law enforcement interests.

Licensees and Authorization Holders Must Receive Commission Approval Prior to Assigning or Transferring Control of a License or Authorization

Broadcast, common carrier, wireless, and other license and authorization holders must request and receive permission from the Commission before assigning or transferring control of a license or authorization.⁷ The Commission must determine that a proposed transaction is in the public interest. Specifically, section 310(d) of the Act provides that no radio licenses "shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding [the] license," unless the license

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⁵ See Executive Brach Review Order, 35 FCC Rcd 10927; Foreign Participation Order, 12 FCC Rcd at 23918-21, paras. 61-66; see also Executive Order No. 13913, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19645 (Apr. 8, 2020) (Executive Order) (stating the Committee shall assess whether a grant or transfer of a license poses a risk to national security or law enforcement interests).

⁶ See Executive Order, 85 Fed. Reg. at 19648 (noting that the Committee may recommend to the FCC that the Commission condition grant of a license or a transfer on compliance with mitigation measures intended to mitigate risks to national security or law enforcement interests of the United States).

⁷ See, e.g., 47 CFR §§ 1.948 (wireless radio services), 63.03-04, 63.24 25.119 (common carrier satellite communications), 73.3540-73.3541 (broadcast stations); 78.35 (cable television relay service).

holder applies for Commission authority to transfer the license, and the Commission finds that the transfer is in the "public interest, convenience, and necessity."8

Likewise, control of domestic or international section 214 authority may be transferred to another party, and an international section 214 authorization may be assigned, only by application and after prior Commission approval.⁹ A carrier may apply for Special Temporary Authority relating to temporary or emergency services under a section 214 authorization.¹⁰ Prior Commission approval is also required for the assignment or transfer of control of any interest in a submarine cable system and associated cable landing license.¹¹

Through this review process, the applicant provides the Commission with, among other things, contact information, ownership information (equity and voting interests), including citizenship, information on any affiliations it may have with foreign carriers, certification that it will comply with Commission rules, and certification that the applicant is not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.¹²

Statutory Benchmarks on Foreign Ownership in Certain Commission Licenses

Section 310(b)(4) of the Act establishes 25 percent benchmarks on ownership by foreign individuals, corporations, and governments in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee.¹³ The Commission may permit higher levels of foreign equity or voting interest in the licensee if it determines that such higher levels are consistent with the public interest.¹⁴ Licensees must

¹¹ 47 CFR § 1.767(a)(11) (prior approval required); *id.* § 1.767(g)(7) (notification in lieu of prior approval for pro forma transactions). *See also* 47 U.S.C. §§ 34–39; Executive Order No. 10530, 19 FR 2709 (May 10, 1954).

(continued....)

⁸ 47 U.S.C. § 310(d). Certain transactions considered to be "pro forma" (i.e., non-substantial) do not require prior approval but must be reported promptly after completion in accordance with applicable regulations. *See, e.g.*, 47 CFR §§ 1.948(c), 1.9020(i)-(j) (spectrum manager leasing arrangements), 1.9030(h)-(i) (long term de facto leasing arrangements).

⁹ 47 CFR §§ 63.03-63.04, 63.24(a). A pro forma transaction does not require prior Commission approval, but an international section 214 authorization holder is required to notify the Commission of the pro forma assignment or transfer within 30 days of the transaction. 47 CFR § 63.24(f). In addition, any party that would be a domestic common carrier under section 214 of the Act is authorized to undertake a pro forma transaction without providing notice, except a domestic common carrier must notify the Commission no later than 30 days after control of the carrier is transferred in a bankruptcy proceeding. 47 CFR § 63.03(d).

¹⁰ *Id.* §§ 63.25, 63.63.

¹² *Id.* §§ 63.04, 63.18(a)-(d), (h)-(p), 63.24(e)(2).

¹³ 47 U.S.C. § 310(b)(4). Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than 20 percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee. 47 U.S.C. § 310(b)(3).

¹⁴ 47 U.S.C. § 310(b)(4). The Commission determined to forbear from applying the foreign ownership limits in section 310(b)(3) to the class of common carrier wireless licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures that apply to the Commission's public interest review of foreign ownership subject to section 310(b)(4) of the Act. 47 CFR § 1.5000(a)(2); see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act, as Amended, IB Docket No. 11-133, First Report and Order, 27 FCC Rcd 9832 (2012) (2012 Review of Foreign Ownership Policies). This forbearance determination

obtain prior Commission approval by filing a petition for declaratory ruling pursuant to the Commission's rules before direct or indirect aggregate foreign equity interests and/or voting interests in a U.S.-organized entity that controls a broadcast, common carrier, or aeronautical fixed radio station licensee exceeds the 25 percent benchmarks in section 310(b)(4).¹⁵

Even after a U.S.-organized entity controlling a licensee receives a declaratory ruling by the Commission that permits it to exceed the foreign ownership benchmarks in section 310(b)(4), further Commission approval is required before any foreign individual or entity not previously approved by the Commission acquires, directly or indirectly, a five percent or greater direct or indirect equity or voting interest in the controlling U.S. organized entity.¹⁶

Notable Enforcement Actions

América Móvil, S.A.B. de C.V. (América Móvil), a Mexican company and the parent of Puerto Rico Telephone Company, Inc. (PRTC), a U.S. territorial company. In the Consent Decree, América Móvil admitted to violations of the Commission's foreign ownership rules, including América Móvil's failure to obtain Commission approval prior to exceeding the Act's statutory ownership benchmarks on foreign individuals and/or entities holding equity and/or voting interests in the U.S. controlling parent of a licensee in violation of section 310(b)(4) when América Móvil and PRTC failed to request and receive prior Commission approval for increases in indirect equity and voting interests that resulted from a corporate transaction. The settlement required América Móvil pay a civil penalty of \$1.1 million, a three-year compliance plan, and detailed monthly ownership reports by América Móvil.¹⁷

Truphone, Inc. In April 2022, the Commission issued a Notice of Apparent Liability for Forfeiture against Truphone, Inc. (Truphone), the controlling U.S. parent of iSmart Mobile, LLC (iSmart), for: (1) apparently violating section 310(b)(4) of the Act by failing to obtain Commission approval prior to exceeding the Act's statutory ownership benchmarks on foreign individuals and/or entities holding equity and/or voting interests in the U.S. controlling parent of a licensee that is subject to section 310(b)(4); and (2) apparently violating sections 214 and 310(d) of the Act and sections 1.948 and 63.24 of the Commission's rules by filing applications in 2011 in which Truphone misreported its ownership structure. As a result, control of iSmart's

¹⁵ 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000-1.5004. See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934 as Amended, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Order).

¹⁶ 47 CFR § 1.5004(a)(1). See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses Under Section 310(b)(4) of the Communications Act of 1934 as Amended, Second Report and Order, 28 FCC Rcd 5741, 5786-87, para. 83 (2013). See also 2016 Foreign Ownership Order, 31 FCC Rcd at 11274, 11284, paras. 4, 22 (extending specific approval requirement for foreign individual or entity not previously approved by the Commission to broadcast licensees).

¹⁷ América Móvil, S.A.B. de C.V., Order and Consent Decree, DA 16-647, 2016 WL 3541055 (June 28, 2016).

FCC licenses and international section 214 authorization passed to foreign entities that were not vetted as required by the Act. The Commission proposed a forfeiture of \$660,639. The Commission ultimately settled this matter with Truphone for \$600,000 and a Consent Decree requiring the divestment of ownership in the company by several Russian families, various reporting obligations, and compliance with the U.S. Department of the Treasury's Specially Designated Nationals and Blocked Persons List.¹⁹

Vertex Telecom, Inc. In August 2021, the Bureau entered into a Consent Decree with Vertex Telecom, Inc. and Vertex SSX, Inc.²⁰ In 2016, 100 percent of the stock in both companies was sold to a large privately traded Chinese telecom company, Dr. Peng Holding, Inc., without receiving the required approvals from the Commission to transfer control of the companies' international and domestic authorizations in violation of section 214 of the Act and sections 63.03, 63.04, and 63.24 of the Commission's rules. The consent decree required that the companies discontinue all regulated activities, pay a \$24,000 forfeiture, be divested of all ownership interests held by Dr. Peng, and request and receive approval from the Commission before offering regulated services in the future.

Media inquiries should be directed to 202-418-0500 or MediaRelations@fcc.gov.

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¹⁸ Truphone, Inc., Notice of Apparent Liability for Forfeiture, FCC 22-30, 2022 WL 1238424 (Apr. 21, 2022).

¹⁹ Truphone, Inc., Order and Consent Decree, DA 22-1072, 2022 WL 13583456 (EB Oct. 20, 2022).

²⁰ Vertex Telecom, Inc., Vertex SSX, Inc., Order and Consent Decree, 36 FCC Rcd 12537 (EB 2021).